

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-OR-194
)	
Titan Towers, LP)	NAL/Acct.No. 200232620009
Owner of Antenna Structure, No. 1233271 near)	
Pine Bluff, Arkansas)	FRN 0004-5429-99
Abilene, Texas)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 22, 2002

By the Enforcement Bureau, New Orleans Office:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Titan Towers, LP (“Titan”), owner of antenna structure number 1233271, apparently liable for a forfeiture in the amount of three thousand dollars (\$3,000) for willful violation of Section 17.4(g) of the Commission’s Rules (“Rules”).¹ Specifically, we find Titan apparently liable for failing to display the Antenna Structure Registration (“ASR”) number on its antenna structure near Pine Bluff, Arkansas.

II. BACKGROUND

2. On May 22, 2002, an agent from the FCC Enforcement Bureau’s New Orleans Field Office inspected antenna structure number 1233271 near Pine Bluff, Arkansas, and observed that the ASR number was not posted anywhere near the base of the structure.

3. On May 28, 2002, a search of the Commission’s records showed this structure to be registered and owned by Titan. The records further showed this structure was constructed on April 16, 2002.

III. DISCUSSION

4. Section 17.4(g) of the Rules requires that the antenna structure registration number be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. The antenna structure was observed on May 22, 2002, and no ASR number was visible.

¹ 47 C.F.R. § 17.4(g).

5. Based on the evidence before us, we find that on May 22, 2002, Titan willfully² violated Section 17.4(g) of the Rules by failing to display the ASR number.

6. Section 1.80(b)(4) of the Rules³ does not establish a base forfeiture amount for failure to post the antenna structure registration number.⁴ The Commission has determined, however, that an appropriate base forfeiture amount for failure to post the ASR number is \$2,000 per violation.⁵ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁶ Titan’s compliance record shows a history of three identical violations from June 22, 1999, to April 5, 2002.⁷ Considering the entire record, including Titan’s history of non-compliance, and applying the statutory factors listed above, this case warrants an upwards adjustment of the base forfeiture amount from \$2,000 to \$3,000.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ Titan Towers, LP is hereby NOTIFIED of this APPARENT

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies equally to Section 503(b) of the Act, provides that “[t]he term ‘willful,’ when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ 47 C.F.R. § 1.80(b)(4).

⁴ See *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”), 12FCC RCD 17087 (1997), *recon. denied* 15FCC Rcd 303 (1999). The *Forfeiture Policy Statement* states that “...any omission of a specific rule violation from the ...[forfeiture guidelines]... should not signal that the Commission considers any unlisted violation as nonexistent or unimportant. *Forfeiture Policy Statement*, 12 FCC Rcd at 17099. The Commission retains the discretion, moreover, to depart from the *Forfeiture Policy Statement* and issue forfeitures on a case by case basis, under its general authority contained in Section 503 of the Act. *Id.*

⁵ *American Tower Corporation*, 16 FCC Rcd 1282 (2001).

⁶ 47 U.S.C. § 503 (b)(2)(D).

⁷ Notice of Violation (“NOV”) issued by the Detroit Field Office on April 25, 2002, for failure to post ASR number on April 5, 2002; NOV issued by the Denver Field Office on August 18, 2000, for failure to post ASR number on July 20, 2000; NOV issued by the Dallas Field Office on June 28, 1999, for failure to post ASR number on June 22, 1999.

⁸ 47 U.S.C. § 503(b).

LIABILITY FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for willful violation of Section 17.4(g) of the Commission's Rules.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Titan Towers, LP SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the *NAL*/Acct. No. and FRN referenced above. Request for payment of the full amount of *NAL* under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE *NAL*/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Titan Towers, LP at 1500 Industrial Blvd., Suite 300E, Abilene, Texas, 79602.

FEDERAL COMMUNICATIONS COMMISSION

James C. Hawkins
District Director, New Orleans Office
Enforcement Bureau

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹⁰ See 47 C.F.R. § 1.1914.